

S3418

Approved For Release 2002/05/17 : CIA-RDP76M00527R000700150061-1

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OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1		2E60	
2		2E50	
3			
4		7E22	
5		1D23	
6		2B1415	

ACTION	DIRECT REPLY	PREPARE REPLY
APPROVAL	DISPATCH	RECOMMENDATION
COMMENT	FILE	RETURN
CONCURRENCE	INFORMATION	SIGNATURE

Remarks:

Please review those sections in S. 3418 and advise me as soon as possible as to those sections which we positively cannot live with.

Meeting held on attached 3:00 p.m.
Wednesday, 4 December, Rm. 7E32 HQ.

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.

DATE

OLC 7D35

12/4/74

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OLC 74-2479
3 December 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Passage of Right of Privacy Bills (H.R. 16373 and S. 3418)

1. The Right of Privacy bills passed their respective houses on Thursday, 21 November 1974. The Senate passed H.R. 16373 the next day, substituting the text of its bill, S. 3418. The measure technically has been cleared for conference; however, a staff member of the House Subcommittee which drafted the House bill is of the opinion that there are such major differences in the bills that it may not be possible to pass a bill in this Congress. The sections in each bill to which the Agency would have to comply are set forth in the attached.

2. The Agency fared in both bills as follows:

House bill--H.R. 16373

CIA was granted a full exemption for all Agency files from most of the provisions of the bill. This included exemption from the court review provision. The Agency exemption is subject to the requirements of section 553 of title 5, the rule-making procedures for Government agencies. This would require a one-time publication in the Federal Register of the Agency's announcement to issue rules to exempt its systems of records from the provisions of the law as granted. The rules would become effective in thirty days, during which time interested persons could submit written comments on the proposed rules. There is no requirement that the Agency accept the views presented and there is no outside review of the Agency's action. Section 553 of title 5 does provide an exemption from the rule-making procedures for "a military or foreign affairs function of the United States." It is the opinion of the Office of General Counsel, however, that the provision in H.R. 16373 involving rule-making is so phrased that this exemption would not apply. OGC is also of the opinion that compliance with the provisions of the rule-making as required would not present a problem to the Agency. There may be latitude in conference to strike the rule-making requirement since the Agency is not subject to these procedures in the Senate bill. An attempt will be made if it does not jeopardize the Agency's exemption.

Senate bill--S. 3418

Agency material was exempted from most of the provisions of the bill. This included exemption from: the authority of a commission to oversee and enforce the law; rule-making procedures under sections 553, 556, and 557 of title 5; court review; and criminal penalties against Federal officials. Senator Ervin, the sponsor of the bill, would not grant the Agency an exemption as "CIA." The Agency exemption therefore is phrased by category of information.

The Agency's exemption reads as follows [NOTE: the word "designed" is a clerical error. It should be "designated." The drafters were advised, and this will be corrected]:

"SEC. 207. REGULATIONS

(d) "The provisions of this Act, with the exception of Sections 201(a)(2), 201 (b)(2), (3), (4), (5), (6), and (7), 201(c)(2), 201(c)(3) (A), (B), (D), and (F), and 202(a)(2) and (3) shall not apply to foreign intelligence information systems or to systems of personal information involving intelligence sources and methods designed for protection from unauthorized disclosure pursuant to 50 U.S.C.A. 403."

3. The exemptions granted the Agency resulted from extensive discussion and negotiation with the Committee staff and OMB. It was more difficult to deal with the Senate staff as can be seen by the number of provisions of S. 3418 to which we are subject. We stand a good chance, however, in conference negotiations to have the House conferees get us out from under all or most of these provisions. It is suggested that the offices of interest review again the sections in S. 3418 listed in the attachment and identify those sections that would present the greatest problems. We will try to have them knocked out in conference if the bill is acted on in this Congress.

STATINTL

Assistant Legislative Counsel

Attachments
Distribution:

Orig - Subj file (H. R. 16373) 1 - S. 3418

STATINTL !

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ATTACHMENT I

H. R. 16373

The Agency is subject to the following subsections in H. R. 16373 [subsection (i) was added as a floor amendment]:

Subsection (b) (1)-(8):

"(b) CONDITIONS OF DISCLOSURE. --No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) for a routine use described in any rule promulgated under subsection (e)(2)(D) of this section;

"(3) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(4) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be

transferred in a form that is not individually identifiable;

"(5) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(6) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(7) pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon the disclosure notification is transmitted to the last known address of the individual; or

"(8) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee."

Subsection (e) (2) (A)-(F)

"(e) AGENCY REQUIREMENTS. --Each agency that maintains a system of records shall--

"(2) publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include--

"(A) the name and location of the system;

"(B) the categories of individuals on whom records are maintained in the system;

"(C) the categories of records maintained in the system;

"(D) each routine purpose for which the records contained in the system are used or intended to be used, including the categories of users of the records for each such purpose;

"(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;"

Subsection (i)

"(i)(1) CRIMINAL PENALTIES. --Any officer or employee of the United States, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section

or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be fined not more than \$5,000.

"(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be fined not more than \$5,000."

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ATTACHMENT II

S. 3418

The Agency is subject to the following sections in S. 3418:

Section 201 (a) (2)

"SEC. 201. (a) Each Federal agency shall--

"(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs; and"

Section 201 (b) (2)-(7)

"(b) Each Federal agency that maintains an information system or file shall, with respect to each such system or file--

"(2) refrain from disclosing any such personal information within the agency other than to officers or employees who have a need for such personal information in the performance of their duties for the agency;

"(3) maintain a list of all categories of persons authorized to have regular access to personal information in the system or file;

"(4) maintain an accurate accounting of the date, nature, and purpose of all other access granted to the system or file, and all other disclosures of personal information made to any person

outside the agency, or to another agency, including the name and address of the person or other agency to whom disclosure was made or access was granted, except as provided by section 202(b) of this Act;

"(5) establish rules of conduct and notify and instruct each person involved in the design, development, operation, or maintenance of the system or file, or the collection, use, maintenance, or dissemination of information about an individual, of the requirements of this Act, including any rules and procedures adopted pursuant to this Act and the penalties for noncompliance;

"(6) establish appropriate administrative, technical and physical safeguards to insure the security of the information system and confidentiality of personal information and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom personal information is maintained; and

"(7) establish no program for the purpose of collecting or maintaining information describing how individuals exercise rights guaranteed by the first amendment unless the head of the agency specifically determines that such program is required for the administration of a statute which the agency is charged with administering or implementing."

Subsections 201 (c) (2) and (3) (A), (B), (D), (F)

"(c) Any Federal agency that maintains an information system or file shall--

"(2) on the date on which this Act becomes effective and annually thereafter, notify the Commission and give public notice of the existence and character of each existing system or file simultaneously, and cause such notice to be published in the Federal Register; and

"(3) include in such notices at least the following information:

"(A) name and location of the system or file;

"(B) nature and purposes of the system or file;

"(D) the confidentiality requirements and the extent to which access controls apply to such information;

"(F) the Federal agency's policies and practices regarding implementation of sections 201 and 202 of this Act, information storage, duration of retention of information, and elimination of such information from the system or file;"

Subsection 202 ((a) (2) and (3)

"SEC. 202. (a) No Federal agency shall disseminate personal information unless--

"(2) the recipient of the personal information has adopted rules in conformity with this Act for maintaining the security of its

information system and files and the confidentiality of personal information contained therein; and

"(3) the information is to be used only for the purposes set forth by the sender pursuant to the requirements for notice under this Act."